

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Stuart Asawaka	Examiner:	Kumiko C. Koyama
Serial No.:	09/905,623	Group Art Unit:	2876
Filed:	July 13, 2001	Docket No.:	10011919-1
Due Date:	November 7, 2007		
Title:	PRINT FOR PAY PRINTER		

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Mail Stop Appeal Brief – Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

This Appeal Brief is submitted in support of the Notice of Appeal filed on September 7, 2007, appealing the final rejection of claims 1-20 of the above-identified application as set forth in the Final Office Action mailed May 1, 2007, and affirmed in the Advisory Action mailed August 21, 2007.

The U.S. Patent and Trademark Office is hereby authorized to charge Deposit Account No. 08-2025 in the amount of \$510.00 for filing a Brief in Support of an Appeal as set forth under 37 C.F.R. §41.20(b)(2). At any time during the pendency of this application, please charge any required fees or credit any overpayment to Deposit Account No. 08-2025.

Appellant respectfully requests consideration and reversal of the Examiner's rejection of pending claims 1-20.

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I. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, LP having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellant that will have a bearing on the Board's decision in the present Appeal.

III. STATUS OF CLAIMS

In a Final Office Action mailed May 1, 2007, claims 1-20 were finally rejected. Claims 1-20 are pending in the application, and are the subject of the present Appeal.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the rejections set forth in the Final Office Action mailed May 1, 2007.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

This Summary is set forth as an exemplary embodiment as the language corresponding to independent claims 1, 9 and 19. Discussions about elements of claims 1, 9 and 19 can be found at least at the cited locations in the specification and drawings.

The present invention, as claimed in independent claim 1, provides a method of operating a printer, said method comprising: providing a printer including a plurality of printer operational resources, said printer operational resources comprising core printer operational resources and enhanced printer operational resources; receiving a resource request at said printer, said resource request including a request for at least one of use and a right of use of a selected at least one enhanced printer operational resource; operating said printer according to said resource request including at least one of use of and right of use of

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said selected at least one enhanced printer operational resource; and initiating a payment transaction based on said operating step, wherein said payment transaction includes a charge calculated only as a function of said enhanced printer operational resource request. (Elements 10, 12, 14, 16, 18, 20, 24, 70, 72, 74; p. 4, line 1 through p. 10, line 2; FIGS. 1-7).

The present invention, as claimed in independent claim 9, provides a printing system comprising: printer control including a plurality of printer operational resources supporting operation of a printer, said plurality of printer operational resources comprising a first resource set and a second resource set; print job control receiving a request relative to at least one of said plurality of printer operational resources; and transaction control detecting said request and initiating a payment transaction for said request only when said at least one of said plurality of printer operational resources is a member of said second set, wherein said payment transaction includes a charge calculated as a function of said resource request. (Elements 10, 12, 14, 16, 18, 20, 24, 70, 72, 74; p. 4, line 1 through p. 10, line 2; FIGS. 1-7).

The present invention, as claimed in independent claim 19, provides a method of printer operation,, said printer having core printer operational resources and enhanced printer operational resources, the method comprising the steps: requesting a print job, said print job including use of a selected enhanced printer operational resource; printing at a printer said print job including use of said selected enhanced printer operational resource; and executing a payment transaction in favor of a resource vendor as a function of said print job, wherein said payment transaction includes a charge calculated only as a function of said enhanced printer operational resource request. (Elements ; p., line through p., line ; FIGS.). (Elements 10, 12, 14, 16, 18, 20, 24, 70, 72, 74; p. 4, line 1 through p. 10, line 2; FIGS. 1-7).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

VI. A. First Ground of Rejection

Claims 1, 3, 4, 9-11, 15 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson, et al., U.S. Patent No. 5,850,584 (“Robinson”) in view of Keane, et al., U.S. Patent No. 6,650,433 (“Keane”).

VI. B. Second Ground of Rejection

Claims 2 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 1 and 9 above, further in view of Pierce, U.S. Patent No. 6,202,0257.

VI. C. Third Ground of Rejection

Claims 5 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 4 and 15 above, further in view of Maruta, et al., U.S. Patent No. 6,064,838.

VI. D. Fourth Ground of Rejection

Claims 6 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 4 and 15 above, further in view of Hayashi, U.S. Patent No. 6,375,297.

VI. E. Fifth Ground of Rejection

Claims 7, 8, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 1 and 15 above, further in view of Nocker, U.S. Patent No. 6,236,486.

VI. F. Sixth Ground of Rejection

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claim 9 above, further in view of Sugiura, et al., U.S. Patent No. 4,393,375.

VI. G. Seventh Ground of Rejection

Claims 14 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 9 and 19 above, further in view of Freeman, U.S. Patent No. 6,134,557.

VII. ARGUMENT

VII. A. Applicable Law

The rejections set forth in the Final Office Action have as their basis 35 U.S.C. §103(a), stating:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Patent Examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case. MPEP §2141. The Examiner bears the burden under 35 U.S.C. §103 in establishing a *prima facie* case of obviousness. *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

The four factual inquires for determining obviousness are as follows: (a) determining the scope and contents of the prior art; (b) ascertaining the differences between the prior art and the claims in issue; (c) resolving the level of ordinary skill in the pertinent art; and (d) evaluating evidence of secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966).

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (a) the claimed invention must be considered as a whole; (b) the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (c) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (d) reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

“Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. ___, *slip opinion at page 14* (2007); *In re Khan*, 78 USPQ2d 1329 (Fed. Cir. 2006). In this regard, identification of a teaching, suggestion, or motivation for modifying a reference or combination of the teachings of multiple references provides helpful insight. *KSR*, 550 U.S. at ___, *slip opinion at page 15*.

VII. B. First Ground of Rejection

Claims 1, 3, 4, 9-11, 15 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson, et al., U.S. Patent No. 5,850,584 (“Robinson”) in view of Keane, et al., U.S. Patent No. 6,650,433 (“Keane”).

Regarding independent claims 1, 9, and 19, the Office Action alleges Robinson substantially discloses the claimed subject matter, but acknowledges that Robinson fails to teach that a charge is calculated only as a function of the enhanced printer operational resource request. To overcome this deficiency of Robinson, Keane is cited as disclosing that business cards are offered to customers by a web server host at no charge, and the cost of printing these items can be recouped by the web server host by charging a fee for upgrades. Specifically, Keane discloses that the web server host may include an advertisement on the back of each free business card, and charge a fee if the customer does not wish the advertisement to appear on the customer’s card. (Keane, col. 14, lines 40-50). The Office Action concludes it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keane to the teachings of Robinson because such modification provides a cheaper rate for the customers to print a standard print without losing profitability of the printing company.

Appellant respectfully submit that the combination of Robinson and Keane cannot support a case of prima facie obviousness as to the claims because, among other possible reasons, the references, alone and in combination, fail to disclose or make reasonably obvious all of the features of the present invention.

Independent claims 1 and 19 set forth, in part, that the printer operational resources comprise *core* printer operational resources and *enhanced* printer operational resources, and specify, in part, that **the payment transaction includes a charge calculated *only* as a function of the *enhanced* printer operational resource request**. Independent claim 9 similarly divides printer operational resources into a *first* resource set (e.g., a core resource set) and a *second* resource set (e.g., an enhanced resource set), and specifies that **a payment transaction is initiated *only* when the requested printer operational resource is a member of said *second* set**.

The specification of the instant application describes that printer operational resources are divided into layers to stratify price levels, and “core” resources contain “the basic printer

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resources needed to print standard output.” (Application, p. 6, lines 29-31). Printer resources outside of the “core” resources are considered “enhanced” printer operational resources. As set forth above, the Office Action acknowledges that Robinson fails to disclose that a charge is calculated only as a function of an enhanced printer operational resource request. Appellant respectfully submits, contrary to the characterization set forth in the Office Action, Keane also fails to teach or make reasonably obvious that that a charge is calculated only as a function of an enhanced printer operational resource request.

The portion of Keane referenced in the Office Action states:

“In some implementations, relatively low cost items, e.g., business cards are offered to customers by the web server host at no charge. The cost of printing these items can be recouped by the web server host by charging a fee for upgrades, e.g., faster delivery, and sales of complimentary items such as business card cases. For example, as discussed above, the web server host may include an advertisement (e.g., “Free Business Cards at vistaprint.com”) on the back of each free card, and charge a fee if the customer does not wish the advertisement to appear on the customer’s card.”

(Keane, col. 14, lines 39-49)

As seen from the above-quoted portion of Keane and contrary to the characterization set forth in the Final Office Action, Keane does not teach or make reasonably obvious that that a charge is calculated *only* as a function of an enhanced printer operational resource request, as set forth in independent claims 1, 9 and 19. Indeed, the explicitly listed “upgrades” of Keane for which a charge is assessed include “faster delivery.” Clearly, the time required to deliver a printed product to a customer is not a printer operational resource of any type. Accordingly, it is incorrect to characterize Kean as teaching that a charge is calculated *only* as a function of an enhanced printer operational resource.

Regarding the option for a customer to pay a fee to avoid the printing of an advertisement on the customer’s business cards, **Appellant submits a *failure to print* does not constitute use of an “enhanced” printer operational resource, as by definition “core” printer resources are used to print the standard, i.e., free, output, and *no* different or additional printer resources beyond the core printer resources (i.e., “enhanced” resources) are used when *not printing* the advertisement.** In the Advisory Action mailed August 21, 2007, the Examiner states:

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“Keane teaches charging a fee according to the preference or feature selected by the user. The Examiner believes that by [sic] not printing an advertisement is considered as an enhancement because it avoids extra information and the printed matter only contains the information that the user wants.”

Appellant submits that the Examiner fails to differentiate between an enhanced *product* as may be perceived by a user, and enhanced *printer operational resources* as set forth in the claims. The above quoted portion of the Advisory Action incorrectly suggests that a product preferred by a user (such as a business card with no advertisement printed on the back of the card) necessarily requires the use of enhanced printer operational resources as described and claimed in the instant application. However, Appellant submits that the information printed on a document, such as a business card, is in no way suggestive of the printer operational resources used to print the document. Accordingly, Appellant reiterates that **a *failure to print* does not constitute use of an “enhanced” printer operational resource, because no resources beyond the core printer resources (i.e., “enhanced” resources) are used when *not printing*.**

For at least the reasons set forth above, the combination of Robinson and Keane does not teach or make reasonably obvious every feature of independent claims 1, 9 and 19. Based on the foregoing, Appellant submits that the combination of Robinson and Keane cannot support a 35 U.S.C. 103(a) rejection of independent claims 1, 9 and 19, and respectfully requests that the rejection be withdrawn.

Each of dependent claims 3, 4, 10-11 and 15 depend from one of independent claims 1 and 9, which are in allowable condition for at least the reasons set forth above. Therefore, dependent claims 3, 4, 10-11 and 15 are also believed in allowable condition at least by reason of their dependency from an allowable claim. For at least the reasons provided above, Appellant submits that Robinson and Keane cannot support a 35 U.S.C. 103(a) rejection of claims 3, 4, 10-11 and 15, and withdrawal of the rejection is respectfully requested.

VII. C. Second Ground of Rejection

Claims 2 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 1 and 9 above, further in view of Pierce, U.S. Patent No. 6,202,0257.

Dependent claims 2 and 13 depend from independent claims 1 and 9, respectively. As set forth above, the combination of Robinson and Keane fails to teach or make reasonably obvious every feature of independent claims 1 and 9. Appellant respectfully submits Pierce fails to remedy the deficiencies of the combination of Robinson and Keane, in that Pierce also fails to teach or suggest distinguishing between *core* printer operational resources (i.e., a first resource set) and *enhanced* printer operational resources (i.e., a second resource set), and further fails to teach or suggest a charge calculated *only* as a function of the request for the use or right of use of an enhanced printer operational resource (i.e., a resource of the second set).

Based on the foregoing, Appellant submits that the combination of Robinson, Keane, and Pierce cannot support a 35 U.S.C. 103(a) rejection and respectfully request that the rejection be withdrawn.

VII. D. Third Ground of Rejection

Claims 5 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 4 and 15 above, further in view of Maruta, et al., U.S. Patent No. 6,064,838.

Dependent claims 5 and 16 depend from independent claims 1 and 9, respectively. As set forth above, the combination of Robinson and Keane fails to teach or make reasonably obvious every feature of independent claims 1 and 9. Appellant respectfully submits Maruta fails to remedy the deficiencies of the combination of Robinson and Keane, in that Maruta also fails to teach or suggest distinguishing between *core* printer operational resources (i.e., a first resource set) and *enhanced* printer operational resources (i.e., a second resource set), and further fails to teach or suggest a charge calculated *only* as a function of the request for the use or right of use of an enhanced printer operational resource (i.e., a resource of the second set).

Based on the foregoing, Appellant submits that the combination of Robinson, Kean, and Maruta et al. cannot support a 35 U.S.C. 103(a) rejection and respectfully request that the rejection be withdrawn.

VII. E. Fourth Ground of Rejection

Claims 6 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 4 and 15 above, further in view of Hayashi, U.S. Patent No. 6,375,297.

Dependent claims 6 and 17 depend from independent claims 1 and 9, respectively. As set forth above, the combination of Robinson and Keane fails to teach or make reasonably obvious every feature of independent claims 1 and 9. Appellant respectfully submits Hayashi fails to remedy the deficiencies of the combination of Robinson and Keane, in that Hayashi also fails to teach or suggest distinguishing between *core* printer operational resources (i.e., a first resource set) and *enhanced* printer operational resources (i.e., a second resource set), and further fails to teach or suggest a charge calculated *only* as a function of the request for the use or right of use of an enhanced printer operational resource (i.e., a resource of the second set).

Based on the foregoing, Appellant submits that the combination of Robinson, Keane, and Hayashi cannot support a 35 U.S.C. 103(a) rejection and respectfully request that the rejection be withdrawn.

VII. F. Fifth Ground of Rejection

Claims 7, 8, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 1 and 15 above, further in view of Nocker, U.S. Patent No. 6,236,486.

Dependent claims 7, 8 and 18 depend from independent claims 1 and 9, respectively. As set forth above, the combination of Robinson and Keane fails to teach or make reasonably obvious every feature of independent claims 1 and 9. Appellant respectfully submits Nocker fails to remedy the deficiencies of the combination of Robinson and Keane, in that Nocker also fails to teach or suggest distinguishing between *core* printer operational resources (i.e., a first resource set) and *enhanced* printer operational resources (i.e., a second resource set), and

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further fails to teach or suggest a charge calculated *only* as a function of the request for the use or right of use of an enhanced printer operational resource (i.e., a resource of the second set).

Based on the foregoing, Appellant submits that the combination of Robinson, Keane, and Nocker cannot support a 35 U.S.C. 103(a) rejection and respectfully requests that the rejection be withdrawn.

VII. G. Sixth Ground of Rejection

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claim 9 above, further in view of Sugiura, et al., U.S. Patent No. 4,393,375.

Dependent claim 12 depends from independent claim 9. As set forth above, the combination of Robinson and Keane fails to teach or make reasonably obvious every feature of independent claim 9. Appellant respectfully submits Sugiura fails to remedy the noted deficiencies of the combination of Robinson and Keane, in that Sugiura at least fails to teach or suggest that a charge calculated *only* as a function of the request for the use or right of use of an enhanced printer operational resource.

Based on the foregoing, Appellant submits that the combination of Robinson, Keane, and Sugiura cannot support a 35 U.S.C. 103(a) rejection and respectfully requests that the rejection be withdrawn.

VII. H. Seventh Ground of Rejection

Claims 14 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Robinson in view of Keane as applied to claims 9 and 19 above, further in view of Freeman, U.S. Patent No. 6,134,557.

Dependent claims 14 and 20 depend from independent claims 9 and 19, respectively. As set forth above, the combination of Robinson and Keane fails to teach or make reasonably obvious every feature of independent claims 9 and 19. Appellant respectfully submits Freeman fails to remedy the deficiencies of the combination of Robinson and Keane, in that Freeman also fails to teach or suggest distinguishing between *core* printer operational resources and *enhanced* printer operational resources, and further fails to teach or suggest a

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charge calculated *only* as a function of the request for the use or right of use of an enhanced printer operational resource.

Based on the foregoing, Appellant submits that the combination of Robinson, Keane, and Freeman cannot support a 35 U.S.C. 103(a) rejection and respectfully requests that the rejection be withdrawn.

VII. CONCLUSION

For the above reasons, Appellants respectfully submit that the cited references neither anticipate nor render obvious claims of the pending Application. Therefore, Appellants respectfully submit that the rejections must be withdrawn, and request the Examiner be reversed and claims 1-20 be allowed.

Any inquiry regarding this Response should be directed to either Nathan R. Rieth at Telephone No. (208) 396-5287, Facsimile No. (208) 396-3958 or Matthew B. McNutt at Telephone No. (612) 767-2510, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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/Matthew B. McNutt/

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CLAIMS APPENDIX

1. (Previously Presented) A method of operating a printer, said method comprising:
providing a printer including a plurality of printer operational resources, said printer operational resources comprising core printer operational resources and enhanced printer operational resources;
receiving a resource request at said printer, said resource request including a request for at least one of use and a right of use of a selected at least one enhanced printer operational resource;
operating said printer according to said resource request including at least one of use of and right of use of said selected at least one enhanced printer operational resource; and
initiating a payment transaction based on said operating step, wherein said payment transaction includes a charge calculated only as a function of said enhanced printer operational resource request.
2. (Original) A method according to claim 1 wherein said printer initiates said payment transaction.
3. (Original) A method according to claim 2 wherein said printer includes a consumable element, said consumable element including a processing element initiating said payment transaction.
4. (Previously Presented) A method according to claim 1 wherein said selected at least one enhanced printer operational resource comprises enhanced output produced by said printer relative to output produced without use of said selected at least one enhanced printer operational resource.
5. (Previously Presented) A method according to claim 4 wherein said selected at least one enhanced printer operational resource comprises a selected printer resolution.
6. (Previously Presented) A method according to claim 4 wherein said selected at least one enhanced printer operational resource comprises a selected printer throughput speed.

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7. (Previously Presented) A method according to claim 1 wherein said selected at least one enhanced printer operational resource comprises access to a selected communication channel.

8. (Previously Presented) A method according to claim 7 wherein said selected communication channel comprises at least one of an infrared link and a network link.

9. (Previously Presented) A printing system comprising:
printer control including a plurality of printer operational resources supporting operation of a printer, said plurality of printer operational resources comprising a first resource set and a second resource set;
print job control receiving a request relative to at least one of said plurality of printer operational resources; and
transaction control detecting said request and initiating a payment transaction for said request only when said at least one of said plurality of printer operational resources is a member of said second set, wherein said payment transaction includes a charge calculated as a function of said resource request.

10. (Previously Presented) A system according to claim 9 wherein said request comprises an incident of use for said at least one of said plurality of printer operational resources.

11. (Previously Presented) A system according to claim 9 wherein said request comprises a period of allowed right of access to said at least one of said plurality of printer operational resources.

12. (Previously Presented) A system according to claim 9 wherein said request comprises a request to remove said at least one of said plurality of printer operational resources from said second set and place said at least one of said plurality of printer operational resources in said first set.

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13. (Original) A system according to claim 9 wherein said transaction control is located within said printer.

14. (Original) A system according to claim 9 wherein said transaction control generates a use report for delivery to a resource vendor.

15. (Previously Presented) A system according to claim 9 wherein said at least one of said plurality of printer operational resources comprises enhanced output produced by said printer relative to output produced without use of said at least one of said plurality of printer operational resources.

16. (Previously Presented) A system according to claim 15 wherein said at least one of said plurality of printer operational resources comprises a selected printer resolution.

17. (Previously Presented) A system according to claim 15 wherein said at least one of said plurality of printer operational resources comprises a selected printer throughput speed.

18. (Previously Presented) A system according to claim 15 wherein said at least one of said plurality of printer operational resources comprises access to a selected communication channel.

19. (Previously Presented) A method of printer operation, said printer having core printer operational resources and enhanced printer operational resources, the method comprising the steps:

requesting a print job, said print job including use of a selected enhanced printer operational resource;

printing at a printer said print job including use of said selected enhanced printer operational resource; and

executing a payment transaction in favor of a resource vendor as a function of said print job, wherein said payment transaction includes a charge calculated only as a function of said enhanced printer operational resource request.

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20. (Previously Presented) A method according to claim 19 wherein said method further comprises reporting use of said selected enhanced printer operational resource to said resource vendor.

21. - 23. (Canceled)

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.